

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.6719 of 1997

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For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

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CHANDUBHAI DAHYABHAI PATEL

Versus

COMPETENT AUTHORITY AND DY COLLECTOR

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Appearance:

MR MUKESH R SHAH for Petitioners

Shri C.C. Bhalja, AGP for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/04/98

ORAL JUDGEMENT :

Rule. Shri C.C. Bhalja, learned AGP waives service of rule.

2. This petition under Article 226 of the Constitution challenges the decision dated 13th May 1997 of the Gujarat Urban Land Tribunal ("The Tribunal" for brevity) in Appeal No.Surat 3/93. In the said Appeal, the present petitioners, four in number, had challenged

order dated 8.2.1991 (Annexure 'B') of the competent authority declaring the lands in question as excess vacant land and also challenged notice dated 21.5.1993 issued under the provisions of sec.11 of Gujarat Urban Land (Ceiling & Regulation) Act, 1976 ("The Act" for brevity). The Tribunal quashed and set aside the notice dated 21.5.1993 issued by the competent authority under sec.11 of the Act. However, the Tribunal did not interfere with the order dated 8.2.1991 of the competent authority declaring the lands in question as excess vacant lands on the ground that the said order of the competent authority was taken in review by the State Government under the provisions of 34 of the Act and by order dated 30.9.1992 the State Government had thought fit not to review the order of the competent authority. It is against the aforesaid order of the Tribunal that the present petition is filed.

3. The competent authority had passed order dated 28.5.1987 on a declaration filed by Kashiben, daughter of Rama Bhana, under sec.6 of the Act. By that order, land admeasuring 10,539 sq. mtrs. was declared excess vacant land. That order was taken by the State Government in review under sec.34 of the Act and the Government found that apart from Kashiben, there were other persons, who were having interest in the land, namely the present petitioners and Dhaniben, widow of Rama Bhana. Hence by order dated 22.6.1989 (Annexure 'A') the State Government set aside order dated 28.5.1987 of the competent authority and directed the competent authority to issue notices to all the interested parties and also to consider declaration submitted by Kashiben along with declarations submitted by her brothers Maganbhai and Chandubhai. The Government required the competent authority also to inquire as to why Kashiben's brothers Maganbhai and Chandubhai had not declared the lands in question in their declaration forms. The State Government, therefore, remanded the matter to the competent authority with directions to look into the matter and decide the matter after issuing notices to all the affected parties. Thereafter the competent authority passed the impugned order dated 18.2.1991 again declaring 10539 sq. mtrs. of land as excess vacant land. This order has not been disturbed by the Tribunal while disposing of the appeal by its order dated 13.5.1997.

4. The grievance of the petitioners herein, who are nephews of Kashiben is that without complying with the aforesaid directions given by the State Government on 22.6.1989, the competent authority merely went on issuing notices to Kashiben, who was no longer interested in the

proceedings. The competent authority, therefore, passed the same order on 18.2.1991 declaring 10,539 sq. mtrs. of land as excess vacant land, which was also the order passed previously on 28.5.1987 and which was already earlier set aside by the State Government in review as stated above.

5. It is, therefore, submitted that the Tribunal having been satisfied that the competent authority had conducted the proceedings and passed final order dated 18.2.1991, without issuing any notice to the petitioners and merely after issuing notices to Kashiben; the Tribunal ought to have set aside the impugned order dated 18.2.1991, Annexure 'B' to the petition after having set aside the impugned notice dated 21.5.1993 under sec.11 of the Act. The appellate authority declined to set aside the order dated 8.2.1991 only on the ground that the Government had taken the matter under review and declined to review the order of the competent authority as per order dated 30.9.1992 in Review Case No.5783/92.

6. Learned counsel for the petitioners has rightly contended that the order dated 30.9.1992 was not passed by the Government after issuing notices to the petitioners or giving them opportunity of being heard. The Government merely took an ex parte decision not to review the order of the competent authority (which was not a speaking order), may be on the ground that the order was not adverse to the interest of the State. But that did not take away the right of the petitioners to challenge the order of the competent authority in appeal before the Tribunal and the Tribunal was required to decide the same on merits.

7. In view of the fact that the Tribunal did find infirmity in the proceedings inasmuch as no notices were issued to the petitioners or to Dhaniben, widow of Rama Bhana, all that is required to be done by this Court is to allow appeal No.Surat-3/93 in its entirety and to set aside the order dated 18.2.1991 of the competent authority and to direct the competent authority to hear and decide the matter afresh in the light of the direction given by the State Government in its order dated 22.6.1989 (Annexure 'A' to the petition) including the directions that the notices be issued to the petitioners as well as to Dhaniben, widow of Rama Bhana and to any other person(s) interested in the land in question, and after giving opportunity of being heard, the competent authority shall decide the matter afresh. It is directed accordingly.

8. The petition is allowed. Rule is made absolute to the above extent. No order as to costs.

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